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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,065	09/09/2003	Nancy Lucas	005216.00013	9198
30754	7590	11/21/2006	EXAMINER	
CARGILL, INC. 15407 MCGINTY ROAD WEST WAYZATA, MN 55391-2399			PASCUA, JES F	
			ART UNIT	PAPER NUMBER
			3782	
DATE MAILED: 11/21/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/657,065	Applicant(s) LUCAS ET AL.	
	Examiner Jes F. Pascua	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,4-17,19-32 and 42-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,4-17,19-32 and 42-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 5, 42 and 51-54 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 5,338,117 to Kucksdorf et al. See Figs. 22-23.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 4, 8-17, 19-21, 24-32, 43-45, 48-50 and 55-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kucksdorf et al. and U.S. Patent No. 5,593,229 to Warr.

Kucksdorf et al. discloses the claimed device, except for the first end having a tear seam. Warr discloses that it is known in the art to provide a tear seam at a first end of an analogous bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the first end of the Kucksdorf et al. bag

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with the tear seam of Warr, in order to facilitate opening the bag and to form a pour spout for dispensing contents.

Regarding claims 16, 17, 30, 56 and 57, Kucksdorf et al. and Warr disclose the claimed invention, as discussed above, except for a second tear seam at the second end of the bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second tear seam at the second end of Kucksdorf et al., since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Regarding claims 4, 20 and 44 Kucksdorf et al. and Warr, disclose the claimed device, as discussed above, except for the first handle having a patch and a cut extending through the patch. Warr further discloses that it is known in the art to provide a patch with a cut on the handle of an analogous bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the first handle of Kucksdorf et al. with the patch having a cut of Warr, in order to reinforce the handle.

Regarding claims 8, 10, 25, 29, 48 and 50, Kucksdorf et al. and Warr, disclose the claimed device except it is unclear if the Kucksdorf et al. bag contains loose material. In the description of the prior art, Kucksdorf et al. discloses that it is known in the art to provide loose materials "such as pet food, coffee, or similar granular products" within square-bottom bags. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bag of Kucksdorf et al. with the loose materials of the prior art bags, since one of the objects of the Kucksdorf et al.

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invention is to provide a bag having handle means usable for carrying and/or dispensing contents.

Regarding claims 9, 24, 32 and 49, Kucksdorf et al. discloses the claimed invention, as discussed above, except for the contents of the bag being salt. It would have been an obvious matter of design choice to contain salt within the Kucksdorf et al. bag, since applicant has not disclosed that salt within a bag solves any stated problem or is for any particular purpose and it appears that the Kucksdorf et al. invention would perform equally well with salt contained therein.

5. Claims 6, 7, 22, 23, 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kucksdorf et al. and Warr, as applied to claims 5, 15 and 29, and in further view of U.S. Patent No. 6,923,574 to Siegel.

Kucksdorf et al. and Warr disclose the claimed device, as discussed above, except for the second handle opening including a rigid, injection-molded plastic handle. Siegel discloses that it is known in the art to attach a rigid, injection-molded plastic handle to an analogous handle opening. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the second handle opening of Kucksdorf et al. with the rigid, injection-molded plastic handle of Siegel, in order to reinforce the handle opening.

Response to Arguments

6. Applicant's arguments filed 10/02/2006 have been fully considered but they are not persuasive.

Applicant remarks that Kucksdorf et al. fails to teach or suggest folding over flaps extending beyond the seam and attaching them to themselves as recited in independent claim 5. The Examiner disagrees. Kucksdorf et al. clearly discloses Figs. 22 and 23 "comprise a flap 40' and a flap 42' folded over along fold lines 41' and 43'". See column 7, lines 27-28. Kucksdorf et al. further discloses the flaps 40' and 42' having "second half portions which extend in overlapping relation away from the central portion of the flat ends. A heat seal 54 is applied adjacent the innermost ends of the second half portions of flaps 40' and 42' as shown in FIGS. 22 and 23 to secure the flaps together at this central portion." See column 7, lines 33-39. The flaps of Kucksdorf et al. meet the structure of applicant's claimed flap because they extend beyond the seam 54, include a double stack of panels and are folded over and attached to themselves at seam 54.

In response to applicant's argument that combining Kucksdorf et al. and Warr as proposed in the Office action would destroy the intended square end functionality of the Kucksdorf et al. bag, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Warr discloses that it is known in the art of bags containing granular or particulate material to provide a tear seam. The Examiner maintains that a person having ordinary skill in the art of granular or particulate containing bags would have found it obvious to provide the bag of Kucksdorf et al. with the tear seam of Warr, since Warr discloses the desirability of easily forming a hole in a bag for the purpose of dispensing contents through the hole.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

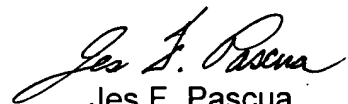
8. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jes F. Pascua
Primary Examiner
Art Unit 3782

JFP